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In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 331.

CLARENCE COLEMAN,
Petitioner,

vs.

JAMES McGETTRICK,
Sheriff of Cuyahoga County, Ohio,
Respondent.

REPLY BRIEF OF PETITIONER TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondent's Brief in Opposition to Petition For Writ of Certiorari, in its statement of facts, contains the following statement:

> "* * * At a hearing before three judges of the Court of Appeals the record of petitioner's convictions and arrests was examined, as was the question of whether substantial questions would be presented in the appeal of his conviction and what the future conduct of Coleman might be in relation to the possibility of his committing future crimes while at large on bail."

It is at once apparent that the quoted statement was designed to suggest (1) that there was a formal hearing; (2) that the Court did something other than read petitioner's "Application for Bail" and listen to petitioner's counsel, who was the only person in the court that day who even discussed the substantiality of the questions

raised in the appeal. The fact is, however, counsel for the respondent was content to argue the efficacy of the denial of bail from the single premise that: "The denial of bail was made subsequent to petitioner's conviction for a felony against the State of Ohio, the petitioner does not have any constitutional right to bail." (See Answer of Respondent, in the Supreme Court of Ohio, page 3.)

Further, and important here, another fact is, in the cause before this Court, the record does not support the belated assertion—made for the first time by respondent, in his "Brief in Opposition" (pp. 2-3), that the questions involved in petitioner's appeal are not substantial. At least this much is certain: respondent, in his defense to this action before the Supreme Court of Ohio, did not meet this issue with even an assertion that such questions were not substantial within the purview of the due process clauses.

I.

Of course, it is an uncontrovertible fact that the federal questions related to petitioner's state court conviction are substantial. They involve the wilful suppression of evidence by the prosecution. Additionally, the appeal involves the unentitled use of evidence that had been ordered suppressed as the product of an illegal search and seizure; also, it involves other questions (including but not limited to those set forth in the Petition before this Court). Surely to assert, as is done by respondent in his "Brief in Opposition," that the questions are not substantial, especially since most of them have not been resolved by any court—to say nothing of the Supreme Court of Ohio—is to attempt a conjuration of the facts before this Court in a desperate attempt to defeat valid contentions being raised by a wronged accused.

II.

But in this cause that is not all, such argument as is now being advanced by respondent exposes, far more eloquently than could ever be argued, the danger that exists when constitutional determinations are approved on the basis of "the presumption of regularity which adheres to all judicial proceedings" (*Coleman v. McGettrick*, 2 Ohio St., at 180). Further it cannot be denied, as was previously argued by petitioner, "if nothing else, an express determination permits scrutiny; whereas without articulation, how is it to be known whether or not the denial [of bail] was based on certain ingrained conceptions (or misconceptions) and predispositions toward a given set of facts." (See Petition, page 7.) Again, the fault characteristic, to which this argument is being directed, is that the respondent *now* would torture the facts to the conclusion that: the Court in denying the bail perforce took into consideration petitioner's substantial questions argument.

The short answer to this, of course, is if the court had stated its basis for denying bail there would be no need to speculate, as respondent has done, and as he will continue to do, in comparable situations involving comparable rights.

CONCLUSION.

For the foregoing reasons, as well as for the reasons set forth in his petition for writ of certiorari, petitioner renews his prayer that the petition for writ be granted. Further, petitioner again requests because of the nature of his cause, that should certiorari be granted, an immediate hearing on the merits be allowed.

Respectfully submitted,

JAMES R. WILLIS,

Counsel for Petitioner.